(19) (20)

Nos. 96-552, 96-553



IN THE

# Supreme Court of the United States

OCTOBER TERM, 1996

RACHEL AGOSTINI, *et al.*,

*Petitioners,*

—v.—

BETTY-LOUISE FELTON, *et al.*,

*Respondents.*

—and—

CHANCELLOR OF THE BOARD OF EDUCATION OF THE CITY OF NEW YORK, *et al.*,

*Petitioners,*

—v.—

BETTY-LOUISE FELTON, *et al.*,

*Respondents.*

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

## BRIEF *AMICI CURIAE* OF THE AMERICAN JEWISH CONGRESS ON BEHALF OF ITSELF AND THE AMERICAN FEDERATION OF TEACHERS, AMERICAN JEWISH COMMITTEE; ANTI-DEFAMATION LEAGUE, BAPTIST JOINT COMMITTEE ON PUBLIC AFFAIRS, CENTRAL CONFERENCE OF AMERICAN RABBIS, NATIONAL EDUCATION ASSOCIATION, NATIONAL JEWISH COMMUNITY RELATIONS ADVISORY COUNCIL, PEOPLE FOR THE AMERICAN WAY AND THE UNION OF AMERICAN HEBREW CONGREGATIONS IN SUPPORT OF AFFIRMANCE

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## INTEREST OF THE *AMICI*

*Amici* (described individually in Appendix A) support the constitutional principle of separation between church and state. They also believe that the federal government should help provide special services for disadvantaged children. Because the question in this case is how the two commitments can be accommodated, *amici* have a significant interest in its outcome. *Amici* believe further that the reconsideration of *Aguilar v. Felton* provides an opportunity to reinforce the constitutional structure developed by the precedents of this Court that have served to separate church and state.

## SUMMARY OF ARGUMENT

**1.** The Court should not permit Rule 60(b) to be used by a losing party to obtain reconsideration of the very issue litigated previously. To do so would be to encourage the further politicization of this Court and constitutional law.

**2.** To the extent that Petitioners simply seek to operate Title I programs on the premises of the parochial schools, the relief they seek can be granted without either eliminating the undue entanglement test or otherwise revising any core doctrine of the Establishment Clause.

**(a)** The undue entanglement branch of the Establishment Clause has not been limited to the financial aid context in which it was first applied. Instead, this branch of the test has been applied across the range of Establishment Clause cases that have been decided by this Court. The doctrine has sustained judgments on subjects as diverse as religious speech, state taxation of churches, and the exemption of churches from anti-discrimination and other regulatory statutes.

**(b)** The undue entanglement doctrine remains a living part of the law. None of the reasons that would justify a departure from the principle of *stare decisis* would sustain a repudiation of the doctrine.

**(c)** Although the undue entanglement test has been criticized as creating a "Catch-22", that criticism is misplaced. First, the criticism assumes that direct aid to religious institutions requires no special precautions, an assumption we believe fundamentally flawed. In any event, entanglement should serve as a threshold bar only where the circumstances make it likely that religion will inject itself in unpredictable, subtle ways, such that a comprehensive, discriminatory, and continuing state surveillance is required to ensure compliance with the principle that government may not fund religion.

**(d)** While *amici* believe that the entanglement test is properly part of the Establishment Clause, they believe that New York City could operate a Title I program on parochial school premises without creating undue entanglement, provided that appropriate safeguards are ordered into effect by the trial court. Those points (listed on page 19 of this Brief) would ensure that the Title I program would be wholly public in its operation. The public school authorities should be required to develop an appropriate, non-intrusive, mechanism for ensuring compliance with the safeguards, including a procedure for processing complaints. Where such compliance can be achieved by non-intrusive, easily applied objective rules, the undue entanglement test is neither necessary nor appropriate..

**3. (a)** The Chancellor and some his *amici* urge this Court to discard the long-settled rule that the Establishment Clause bars



financial aid to religious institutions. In its stead, they would substitute a rule of equal funding of religious and secular institutions. This case, which has no properly developed record, is not the occasion for such a reexamination.

**(b)** In any event, while it is true that the Court has acknowledged that equality between religion and non-religion is an element of the Establishment Clause, it has refused to allow that principle to override the core bar against financial aid to religious schools. The no-aid rule finds support in this Court's earliest Establishment Clause cases and through all of its parochial school aid cases. (Some of the Chancellor's *amici* acknowledge this, and ask that those cases be overruled in favor of the equal treatment cases.) The no-aid rule limited the holdings in all of the cases the Petitioners cite, including: *Witters v. Washington*; *Zobrest v. Catalina Foothills* and *Mueller v. Allen*.

Most importantly, in *Bowen v. Kendrick*, in which this Court relied on the equal funding argument, and upheld the facial constitutionality of a statute permitting religious and secular agencies to run chastity programs, it pointedly refused to permit pervasively sectarian institutions to provide such programs or to permit non-pervasively sectarian agencies to use federal funds to teach religion.

**(c)** History demonstrates that the no-aid principle has always been understood to be part of the Clause. The Founders clearly contemplated a no-aid rule. Throughout the nineteenth century lawyers and others emphasized that the no-aid rule was an essential part of American church-state relations.

## ARGUMENT

The narrow question before the Court, originally in 1985, and now again, is not whether, but under what circumstances, Title I services should be provided to parochial school students. The broader issue raised by some Petitioners and their supporting *amici* is whether this Court should revise wholesale its precedents governing aid to parochial schools. The first question is difficult. The second is not. Regardless of how the first question is answered, the answer to the latter question is an emphatic "no."

### I. Rule 60(b) Is Not An Appropriate Vehicle To Readjudicate Constitutional Issues Decided In *Aguilar*

F.R.Civ.P. Rule 60(b) has never been invoked by a losing party to have a constitutional issue readjudicated by this Court. The arguments against doing so here are set out in the Briefs of the Respondents and the Committee on the Supreme Court of the New York County Lawyers Association. We adopt their arguments, adding only a few observations.

*Aguilar* was decided by a 5-4 vote. Such decisions constitute a tenth of last Term's decisions, 110 HARV.L.REV. 370 (1996), and are particularly common in cases which excite the greatest public controversy. Last Term, for example, the racial redistricting case, *Shaw v. Hunt*, 116 S.Ct. 1894; the punitive damages case, *BMW of North America v. Gere*, 116 S.Ct. 1589; and the Eleventh Amendment case, *Seminole Tribe v. Florida*, 116 S.Ct. 1114, were all decided by a 5-4 vote.

Seminal constitutional issues often place this Court at the center of sharp political controversy. Despite the intensity of disagreement, however, losing parties respect the process and



rely on subsequent litigation to narrow or modify decisions with which they may disagree. Even though this Court's members may change, the normal processes of constitutional adjudication do not permit a disappointed party, buoyed merely by a change in the Court's composition, to pursue a shortcut to a reversal.

To grant the 60(b) motion in this case will foster the hope that such reversals can be achieved, aggravating the political tensions that too often surround the work of this Court. The issues Petitioners raise are easily reviewable in other cases—for example, in a lawsuit brought by another school district affected by *Aguilar*, or by the parties to a case such as *Helms v. Cody*, 1997 W.L. 35283 (E.D. La. 1997), in which the decision turns on the conclusion that *Aguilar* is no longer good law. While the constitutional issues in this case may loom large in the eyes of dissatisfied parties, the resulting erosion of the authority of this Court, and the leapfrogging over the normal processes of adjudication, are institutional costs that far outweigh the assumed importance of the issues in this case.

### II. If The Court Reaches The Merits, It Should Not Revise The Undue Entanglement Principle, Or Any Other Aspect Of The Core Establishment Clause Jurisprudence

#### A. The Undue Entanglement Principle is Well Ensconced in the Case Law

The Agostini Petitioners direct their primary attack on the third prong of *Lemon v. Kurtzman*, 403 U.S. 602 (1971)—that of undue entanglement between government and religion. The Chancellor and other officials of the New York City Board of Education ("Chancellor") join that attack, but more broadly challenge certain barriers the Court has found in the

Establishment Clause against the transfer of financial responsibility for the operation of religious education from the church to the public fisc. The Chancellor and his *amici* seek to substitute for the long-standing interpretation of the Establishment Clause barring financial aid to religion a rule permitting the state to fund religious and secular causes equally. Either eliminating the entanglement prong or adopting an equality principle would erode the intended meaning of the Establishment Clause, and either course would cut a far broader swath through the law than is necessary to resolve this case.

We demonstrate below why any weakening of the undue entanglement principle would in significant measure erode the intended meaning of the Establishment Clause (Point II. A.1.), and why there is no need to revise that principle in order to resolve this case (Point II.A.2). Although undue entanglement is the only question that the Court need address in order to resolve this case, we respond in Point III to the Chancellor's argument in support of a rule which would allow equal funding of both secular and religious causes, and demonstrate why this argument converts a case about the margins of the Establishment Clause to one about the Clause's very essence (Point III.A), and why the proposed rule is contrary to the history and purposes of the Establishment Clause (Point III.B).

### 1. A Ban on Undue Entanglement is an Indispensable Element of the Establishment Clause; New York City's Proposed Title I Program can be Implemented Without Undue Entanglement

*Aguilar* rests on the third prong of *Lemon v. Kurtzman*, that a government program may not constitutionally create "undue



entanglement between the organs and officials of the state and the organs and officials of the church." *Aguilar*, 472 U.S. at 408-15; *id.* at 415-17 (Powell, J., concurring); *id.* at 420-21 (Rehnquist, J., dissenting); *id.* at 426 (O'Connor, J. dissenting) ("The Court today relies entirely on the entanglement prong").

Petitioners' direct attack on undue entanglement does not challenge a novel principle created for *Aguilar* alone, the elimination of which would affect that case only. Undue entanglement has been an integral and significant part of this Court's jurisprudence both before *Aguilar* and after, and outside the aid-to-parochial-school context in which it first arose. It developed both in cases rejecting entanglement allegations, as well as in cases sustaining them. These cases demonstrate how deeply rooted is the Court's concern with undue entanglement.

In the speech context, cases allowing religious speech in public facilities have rested in part on the fact that a religion-neutral rule avoids undue entanglement, and is therefore constitutionally sounder than a competing rule distinguishing between religious and secular speech. *Widmar v. Vincent*, 454 U.S. 263 (1981). *Widmar* began a line of cases which support the proposition that, assuming no real or perceived official sponsorship, religious speech in a public forum should be treated no differently from non-religious speech. *Capital Square Advisory & Review Bd. v. Pinette*, 115 S.Ct. 2440 (1995); *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 115 S.Ct. 2510 (1995); *Lamb's Chapel v. Center Moriches Union Sch. Dist.*, 508 U.S. 384 (1993).

In *Serbian E. Orthodox Diocese v. Milivojevich*, 426 U.S. 696 (1976), this Court refused to referee a struggle for control

of a church. It noted that by refereeing such contests "the state will become *entangled* in essentially religious controversies." *Id.* at 709 (emphasis added). *See also, Natal v. Christian and Missionary Alliance*, 878 F.2d 1575 (1st Cir. 1989).

The same concern led this Court to reject a church veto over the granting of liquor licenses to nearby premises. Any effort by the state to ensure that the veto was not used to further religious agendas would have required undue entanglement. *Larkin v. Grendel's Den*, 459 U.S. 116 (1982).

An Establishment Clause challenge to the exemption of religious corporations from Title VII's ban on religious discrimination was rejected on entanglement grounds in *Corporation of the Presiding Bishop v. Amos*, 483 U.S. 327 (1987). A building services employee of a Mormon community center challenged the exemption's breadth, arguing that a narrow exemption for positions with a religious component would have satisfied the legitimate governmental interest in avoiding undue entanglement at less cost to non-Mormon employees.

This Court unanimously rejected that claim. Accepting it would have entangled the government in policing the elusive boundary between jobs with substantial religious content and those without. 483 U.S. at 339; *id.* at 344 (Brennan, J., concurring). ("A case-by-case analysis ... would both produce excessive government entanglement with religion and create the danger of chilling religious activity.")

*Hernandez v. Commissioner*, 490 U.S. 680, 693 (1989), rejected the claim that denying charitable deductions for contributions for which there was a *quid pro quo* created undue entanglement by requiring an evaluation of the economic value



of religious services. This Court reasoned that a uniform rule against deductions for which there was a *quid pro quo* created less entanglement than would a rule distinguishing between religious and secular ones.

Upon similar reasoning, this Court rejected a challenge to the application of the Fair Labor Standards Act ("FLSA") to church-run businesses in *Tony and Susan Alamo Found. v. Secretary of Labor*, 471 U.S. 290, 305-06 (1985), concluding that applying FLSA to those enterprises was less entangling than discriminating between religious and secular ones. *Accord, Jimmy Swaggert Ministries v. Board of Equalization*, 493 U.S. 378, 392-96 (1990) (universal applicability of sales tax less entangling than exemption of religious items).

The undue entanglement branch, like the others in the tripartite test, was not created *ex nihilo* in *Lemon v. Kurtzman*, 403 U.S. 602 (1971). Rather, *Lemon* merely restated the "cumulative criteria developed by the Court over many years." *Id.* at 621. As authority for the undue entanglement inquiry, Chief Justice Burger in *Lemon* cited *Walz v. Tax Comm'n*, 397 U.S. 664, 674-75 (1970), warning against excessive government entanglement with religion in regard to financial aid programs: "Obviously a direct money subsidy would be a relationship pregnant with involvement and ... encompass sustained and detailed administrative relationships ...."

Justice Harlan, while recognizing that the "core" values of the Establishment Clause were bans on official support for religion and official coercion to participate in religious activities, noted that these values "may not suffice by themselves to

achieve in all cases the purposes of the First Amendment." *Walz*, 397 U.S. at 695. Hence, he wrote:

> Although the very fact of neutrality may limit the intensity of involvement, government participation in certain programs, whose very nature is apt to entangle the state in the details of administration and planning

can violate the Establishment Clause. *Id.* (Harlan, J., concurring).

Petitioners' call for the Court to discard the undue entanglement inquiry—a call the Secretary of Education pointedly refuses to join—would more than merely adjust the literary formulation of a test or lower the barriers to aid to parochial schools. Adoption of their position would reverberate across the entire range of Establishment Clause cases.

Even assuming that there are special reasons for reconsidering the specific application of the entanglement test to New York City's Title I program, none counsel reconsideration of the test itself. *Planned Parenthood v. Casey*, 505 U.S. 833, 854-55 (1992); *Payne v. Tennessee*, 501 U.S. 808, 842 (1991) (Souter, J., concurring) citing *Arizona v. Rumsey*, 467 U.S. 203, 212 (1984): "No evolution of legal principle has left the [entanglement branch's] doctrinal footings weaker than they were ...." *Casey, supra*, 505 U.S. at 857. As the cases discussed show, undue entanglement remains a living part of the law, not a remnant of abandoned doctrine. *Patterson v. McLean Credit Union*, 491 U.S. 164 (1989). This Court should not now discard it.



### 2. A Ban on Undue Entanglement Comports With the History and Purposes of the Establishment Clause

The undue entanglement test is well grounded in the purposes and history of the Establishment Clause, as well as the history of established churches in their relationships with their patrons. States with an established church arrogate to themselves decisions for and about the church: who shall hold church office; what church doctrine shall be; what liturgy the church shall use; and about which public issues the church may speak. These features figured prominently in the church-state battles of post-reformation England of which the Founders were well aware and intent on preventing. *Larkin, supra*.

To this day, these are acutely divisive problems where any form of established church persists (ordaining women in England; who is a rabbi in Israel). The debates are contentious, and almost impossible to resolve through democratic processes.

By disestablishing the church, the First Amendment went far towards preventing state interference with the internal affairs of the church, and concomitantly preventing the church from dominating the state. Avoiding entanglement does not merely protect the liberties of the churches, as Petitioners and their *amici* contend. It ensures the rights of all citizens.

Those broad goals can be eroded piecemeal as well as wholesale. Tolerating "undue entanglement" of state and church will signal a significant erosion of disestablishment. A ban on arrangements in which undue entanglement is unavoidable is a necessary and desirable bulwark against the political and religious evils that the Clause was designed to forestall.

### 3. Criticism of Undue Entanglement Rests on a Misconception of its Scope

As we have observed, *Aguilar* rested on no new legal principle nor one contrived for that case. Nevertheless, the threshold ban on programs creating undue entanglement has been criticized by some members of this Court for creating a "Catch-22." If the government fails to police religious organizations, it is said, government funds may be used impermissibly to fund religious activity. If it does police them, it runs afoul of the ban on undue entanglement. *See, e.g., Wallace v. Jaffree*, 472 U.S. 38, 109-11 (1985) (Rehnquist, J., dissenting); *Roemer v. Board of Pub. Works*, 426 U.S. 736, 769-70 (1976) (White, J., dissenting). An unstated assumption of this argument is that funding of religious institutions poses no special constitutional difficulties and requires no special safeguards. With all deference, we submit that this assumption is fundamentally flawed. Point III *infra*.

The "Catch-22" exists only if the undue entanglement test is caricatured and expanded beyond its proper scope. Entanglement should serve as a threshold bar only where the circumstances make it likely that religion will inject itself in unpredictable and subtle ways, such that "a comprehensive, discriminatory, and continuing state surveillance," *Lemon*, 403 U.S. at 619, is required to ensure compliance with the principle that government may not fund religion. *Bowen v. Kendrick*, 487 U.S. 589, 616-17 (1988); *Tilton v. Richardson*, 403 U.S. 672, 682 (1971).

What is forbidden by the undue entanglement inquiry is not policing that is external, mechanical, routine and predictable, but



policing that is intrusive, formless, varying and unpredictable, and that requires religious and secular institutions to interact continually over subtle and hazy border questions. "Entanglement is a question of kind and degree." *Lynch v. Donnelly*, 465 U.S. 668, 684 (1984). "There is no exact science in gauging the entanglement of church and state." *Roemer, supra*, at 766. *See also, Hunt v. McNair*, 413 U.S. 734, 736 (1973); *Rosenberger, supra*, 115 S.Ct. at 2525-26 (O'Connor, J., concurring). The question is necessarily one of judgment, not precise mathematical calculation.

The cases considering undue entanglement claims are fully consistent with this emphasis on practical judgment. Where the state subsidizes tests created by religious schools undue entanglement exists, because intrusive and continuous review of the tests would be required to ensure against public funding of religion. No such supervision is required where the state pays the schools for administering the state's own exams. *Compare Levitt v. Committee for Pub. Educ. & Religious Liberty*, 413 U.S. 472 (1977) *with Committee for Pub. Educ. & Religious Liberty v. Regan*, 444 U.S. 646, 660 (1980). The point is not that state-created tests cannot be used improperly, but that the likelihood is so low, and so easily and mechanically detected, that undue entanglement does not bar the program at the threshold.

Similarly, while the impressionability of young students and the more intense religious indoctrination present in elementary and secondary parochial schools require close supervision of aid to such schools, the very different characteristics of colleges and universities do not. *Roemer, supra*, 426 U.S. at 762-65; *Hunt*,

*supra*. Teenage pregnancy prevention services do not create undue entanglement in non-pervasively religious institutions, but do in pervasively sectarian ones. *Bowen*, *supra*, 487 U.S. at 615-18.

Aid to parochial schools not readily used for religious instruction, such as textbooks approved for public school use, *Board of Educ. v. Allen*, 392 U.S. 236 (1968), does not create undue entanglement, but does if the aid can readily be employed for religious instruction, such as teacher salaries or "community education" programs. *Grand Rapids City Sch. Dist. v. Ball*, 473 U.S. 373 (1985); *Wolman v. Walter*, 433 U.S. 229 (1977); *Lemon v. Kurtzman*, 403 U.S. 602 (1971).

Bus transportation for school trips, which can either be to a science museum or a religious shrine, and which, if the ban on funding religious institutions is to remain meaningful, require close and ongoing discretionary review of decisionmaking with hazy boundaries, creates undue entanglement. *Wolman*, *supra*, 433 U.S. at 254-55 citing *Roemer*, *supra*, 426 U.S. at 749. A real estate exemption for church property used for charitable but not religious purposes would be entangling, but an exemption for all church property is not. *Walz*, *supra*. Similarly, there is no entanglement when sales taxes are assessed against churches. *Jimmy Swaggert Ministries*, *supra*; *Tony and Susan Alamo Found.*, *supra*.

That the Court has not had occasion recently to invalidate a program on these grounds—as it did in *Larkin*, *supra*; *Wolman*, *supra*; *Meek v. Pittenger*, 421 U.S. 349 (1975); and *Lemon*, *supra*—demonstrates only that the Court's lessons on the dangers of excessive entanglement have been taken to heart.



Excision of the test from the law would reverberate unpredictably, and far beyond the narrow confines of this case.

In sum, the "Catch-22" argument rests on the fallacy that government aid to religious institutions gives rise to no special concerns; and an exaggeration of the scope of the undue entanglement doctrine. Properly understood and limited, the undue entanglement inquiry should remain part of Establishment Clause jurisprudence.

### B. If this Court Grants the Motion, It Should Direct Imposition of Easily Policed Safeguards to Ensure Compliance with the Constitution

It is understandable that in deciding *Aguilar* this Court thought that New York's Title I program created the need for policing a border of uncertain location. The program involved instruction; it required interaction of no fixed content between public and private school instructors, and it took place on the premises of the religious schools.

Moreover, *Aguilar* was decided in tandem with *Ball*, *supra*, involving a program that, in addition to other defects, cried out for strict policing of the sort condemned by the undue entanglement principle. Teachers in the program at issue in *Ball* taught a variety of courses, including some with possible religious content. The courses included those all schools must or commonly do offer, including enrichment courses, math, reading, art, language, yearbook, Christmas arts and crafts, humanities, and school newspaper. Some of the teachers were recruited from the parochial schools and taught in two different capacities in the same school, sometimes as public, sometimes as religious, school teachers.

Understandably this Court decided that the arrangements at issue in *Aguilar* and, *a fortiori*, in *Ball*, were pregnant with the possibility of undue entanglement. (In *Ball*, of course, the constitutional difficulties were not limited to problems of undue entanglement). It is now apparent, however, that the risk of a Title I remedial program becoming a vehicle for promoting religious education can be minimized by clear, easily policed rules. In *Ball*, those risks could be avoided only by the government's "undue entanglement" with the religious school. Because *Aguilar* and *Ball* involved different programs, they require different applications of the entanglement principle.

In reaction to this Court's *Aguilar* decision, indeed, at its invitation, 472 US. at 414; *id.* at 430-31 (O'Connor, J., dissenting), school districts moved their Title I programs out of parochial schools and into self-contained classrooms, typically in vans. Courts have understood *Aguilar* to require a departure only from the school building itself, not the premises of the parochial school (*e.g.*, a parking lot). *See, e.g., Walker v. S.F. U.S.D.*, 46 F.3d 1449 (9th Cir. 1995); *Barnes v. Cavazos*, 966 F.3d 1056 (6th Cir. 1992).

With the exception of actual presence in the parochial school building, the current program appears otherwise identical with the program invalidated in *Aguilar*. Although the issue has not been developed factually (as it should be on remand), there do not appear to be difficulties in ensuring that New York's Title I program remains wholly under secular control, particularly in



light of the statutory command that Title I programs supplement, not replace, existing programs. 20 U.S.C. § 6322(b).[1]

If the facts bear out this conclusion, policing the boundaries between public personnel and religious schools should be no more onerous or unduly entangling than policing the loan of textbooks to parochial schools. New York's Title I program would be far less onerous to regulate than the various wide-ranging programs at issue in *Ball*, in which the public schools bore much of the ordinary educational burden of the parochial schools and became so intertwined with their day-to-day operation as to suggest both a physical and symbolic union between the two. 473 U.S. at 389-92.

The Chancellor now proposes to take the vans and (metaphorically) move them intact into the parochial school building. Assuming that certain safeguards are in place—and *amici* believe that, taken as a whole, these safeguards are constitutionally required, *see* page 19, *infra*—undue entanglement should not be a threshold bar to the provision of Title I services in the parochial schools. Of course, constitutional violations can still occur, and the Board of Education must not be complacent about ensuring compliance.

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1. A very different case would be presented if parochial schools could, as the public schools may, use Title I funds for "entire school" programs designed to improve the school's instruction generally. The Secretary commendably does not allow parochial schools to use Title I funds this way.

But these concerns are not of such a quality, or of such frequency, as to impermissibly intertwine church and state.

Permitting on-site Title I programs would not precisely return the law to the *status quo ante*. Prior to *Aguilar*, the Department of Education had in force Title I regulations that, while not addressing all possible constitutional violations, went a long way in that direction. In light of *Aguilar*, it is understandable that the current rules, 34 C.F.R. § 200.12 and § 2001.13, are more limited, addressing chiefly the use of dedicated computers on school premises. They do not now delineate in detail what would be required to conduct a constitutional in-school program,.

New York City has represented that, if *Aguilar* were overturned, it would conduct the program in ways that would entirely insulate it from religious influences. Those representations are not embodied in any rule of the Board of Education. The Board's own performance leaves room to doubt the strength of its commitment. It has sometimes departed from principles of religious neutrality in the operation of Title I programs in the face of determined religious pressures. *Parents Ass'n v. Quinones*, 803 F.3d 1235 (2d Cir. 1986). Some guarantee of compliance is imperative.

Petitioners insist that the safeguards New York City previously had in place were sufficient to ensure compliance with the First Amendment. They point to the absence in the record of proven instances of religious influence on the Title I program when public school teachers were sent into the parochial school. The silence of this record is not, however,



proof that no such abuses occurred or that they might not occur in the absence of safeguards.

A bare bones overruling of *Aguilar* would lend full-throated approval to practices that are at best voluntary, not binding on the Secretary or the Chancellor, and that may have been wholly inadequate to the task when last in place. Assuming that it may be used in this case, Rule 60(b) provides that relief is to be granted "upon such terms as are just." In this case, those "just" terms should include sufficient mandatory safeguards to ensure that Title I programs remain wholly under public control. At a minimum they must encompass the following points:

(a) Personnel should be selected, assigned, supervised and disciplined by public authorities, on the same terms as other public school teachers. In particular, assignments to parochial schools should be made by public authorities without regard to the race, religion, sex, or political affiliation of a teacher. Parochial schools must not be allowed to control the dress of public school teachers.

(b) The curriculum should be controlled by public school authorities.

(c) Access to the program should be dependent on objective tests selected by public school authorities. Religious criteria may not be used to screen student access.

(d) Classrooms should be wholly under public school control, and be free of all religious symbols.

Compliance with these safeguards, taken together, likely would ensure that the Title I program is free of religious influences and does not give any appearance of government endorsement of religion. Rather than undertake the task itself,

this Court should remand this case to the trial court to prescribe the exact form of the required safeguards. Public and parochial school authorities should be required to agree to comply with these safeguards, and to inform all persons who participate in the Title I program of what they provide.

## III. The Court Should Reject The Attempt To Make Equality Between Religious And Secular Causes The Decisive Test

It is possible to decide in favor of Petitioner without changing the law regarding aid to parochial schools, much less the general rules for deciding Establishment Clause cases. Nevertheless, the Chancellor and his *amici*, notably the Christian Legal Society ("CLS"), urge this Court to discard the long-settled no- aid-to-religion rule and replace it with a principle of equal funding of both secular and religious causes. To accept that invitation would be to convert a case about the Establishment Clause's margins to one about its very essence.

In this significant respect, while *amici* depart from the Solicitor General's views on several points, we applaud and join his proposal that any revisitation of *Aguilar* should be narrow and limited. Especially in light of the special procedural circumstances of this case, this is not the occasion for sweeping declarations on future cases. This is certainly not a case in which to reconsider *Lemon* in whole or in part. Other cases now developing in the lower federal and state courts would be affected by some of the wide-ranging pronouncements invited by Petitioners and other *amici*. Neither the parties to those cases nor the records they are making are here. This Court's settled counsels of prudence stand against affecting or deciding issues



in those cases in the course of reconsidering *Aguilar*. We write only to show how revolutionary is the course proposed by Petitioners.

### A. The Establishment Clause has been Correctly Understood to Forbid Subsidies to Religious Organizations for Religious Purposes

As applied to aid to parochial schools and other religious institutions, this Court's decisions ever since *Everson v. Board of Educ.*, 330 U.S. 1 (1947), have taken for granted that the Establishment Clause imposes special restrictions on the funding of religious enterprises. *Everson* traced the history of the dispute over Virginia's attempt to levy a small tax for the support of ministers of the gospel. That history was retraced in *Lemon* and *Committee for Public Educ. & Religious Liberty v. Nyquist*, 413 U.S. 756 (1973). *Cf. Quick Bear v. Leupp*, 210 U.S. 50 (1908) (distinguishing between Indian trust funds and tax funds for Establishment Clause purposes); *Terret v. Taylor*, 13 U.S. (9 Cranch) 43 (1815).

Most recently, in *Rosenberger*, *supra*, a majority made plain its continued adherence to the no-aid rule. Considering the constitutionality of using a student activity fee to be used to print a religiously oriented student magazine, the majority carefully distinguished a student fee from a general tax. Expressly agreeing with Justice Souter's dissent, the majority "recognized special Establishment Clause dangers where government makes direct payments to sectarian institutions." *Id.* at 2522. It warned against the "abuse" of a state "subsidizing" a church by paying its bills. *Id.* at 2524.

Justice O'Connor, having first restated the *Everson* rule, 115 S.Ct. at 2526, concluded that permitting student funds to be indirectly used for a religious periodical "neither trumpets the supremacy of the neutrality theory, nor the demise of the funding prohibition in Establishment Clause jurisprudence." *Id.* at 2526-28. The dissenting Justices, who would have held the use of a student fee to support a religious publication unconstitutional, reaffirmed the no funding principle.

The Chancellor mistakenly argues that *Zobrest v. Catalina Foothills School District.*, 509 U.S. 1 (1993), and *Witters v. Washington Dep't of Services for the Blind*, 474 U.S. 481 (1986), together with the equality for religious speech cases such as *Widmar*, *supra*, *Rosenberger*, *supra*, and *Pinette*, *supra*, stand broadly for the proposition that equality between religion and non-religion is the nub of the Establishment Clause.

. Unlike the Chancellor, *amicus* CLS at least acknowledges that the aid to parochial school cases are in conflict with this argument. It asks that the no-aid cases be overruled. In particular, CLS argues that the no-aid rule is at odds with the Free Exercise Clause, even though that Clause has been held by this Court not to require equal subsidization of religious and public education. *Leutkemeyer v. Kaufmann*, 364 F.Supp. 376 (E.D. Mo. 1973), *aff'd*, 419 U.S. 888 (1974). *Accord*, *Nyquist*, *supra*, 413 U.S. at 788-89; *Norwood v. Harrison*, 413 U.S. 455, 462 (1973); *Roemer*, *supra*, 426 U.S. at 747.[2]

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2. Critics of the no-aid rule have sought a constitutional amendment to overturn it. *See* H.J.Res. 121, 104th Cong. 2d Sess. (1996).



Repudiating the no-aid rule would not only overrule *Leutkemeyer*, it would eviscerate the opinion in *Everson*, *supra* at 16, and holdings in cases such as *Lemon*, *supra*; *Nyquist*, *supra*; *Wolman*, *supra*; *Pittenger*, *supra*; *Levitt*, *supra* and *Ball*, *supra*, together with numerous summary affirmances and numerous decisions from the state and lower courts. The no-aid rule underlies the decisions in numerous other cases, including *Bowen*, *supra*; and *Quick Bear*, *supra*. It is surely neither necessary nor desirable for this Court to undertake such a wholesale revision of its precedents here.

**B. No Case Adopts an Equal Funding Rule**

Not a single one of the cases said to stand for the principle of equal funding for religious and secular causes has adopted it in the unalloyed form for which the Chancellor and *amici* contend. *Mueller v. Allen*, 463 U.S. 388 (1983), probably comes closest to such a rule—and it did not adopt it. There, this Court allowed parents of both parochial and public school students to deduct certain school expenses from state income taxes. Pointing to the statute's "neutrality", the Court upheld the deduction against Establishment Clause attack. But the Court did not rest on neutrality alone. It began by noting that review took place under the "especially broad latitude" applicable to classifications created in state tax laws, 463 U.S. at 398, a factor emphasized by later decisions. *Zobrest*, *supra*, 509 U.S. at 9; and *Ball*, 473 U.S. at 296 n. 13.

Later, the Court explained that providing aid to parents "by means of a deduction, rather than a direct grant, ... serve[d] to make the State's action less objectionable." 463 U.S. at 402 n.10. And the majority recognized that "[t]he Establishment

Clause of course extends beyond prohibition of a state church or payment of state funds to one or more churches." *Id.* at 400

*Witters v. Washington*, 474 U.S. 481 (1986), pointedly refused to read *Mueller* as embracing a simple equality rule. There, a blind person wished to use vocational training benefits for theological education. The state refused, citing the Establishment Clause. This Court reversed, chiefly because the fact that funds flowed to a religious institution was sheer happenstance. The program was certainly not a scheme for transferring financial responsibility for religious education to the public fisc, one of the Establishment Clause's central prohibitions. *Id.* at 488 (citing *Nyquist*, *supra*, 413 U.S. at 785).

Three concurring Justices thought that the fact of equal treatment ought to control regardless of whether the number of persons subsidized was great enough to make the program a reliable and substantial source of support for religious education. The majority disagreed. 474 U.S. at 488-89.

In *Bowen v. Kendrick*, 487 U.S. 589 (1990), equal funding again did not carry the day. There, on a equal basis, a statute funded pregnancy prevention programs operated by secular and religious providers. If equality was sufficient, the program was constitutional not only on its face, but as applied, even if funds went to pervasively sectarian institutions for religious programs.

This Court refused to go so far. It upheld the program's facial constitutionality with two important caveats: first, a non-pervasively religious recipient could not use government funds to teach religion; and second, notwithstanding equality between religious and non-religious grantees, a pervasively sectarian program could not receive funding. What the *Bowen* Court did



not do was hold that the bare fact of equality permitted direct subsidization of religious teaching.

Similarly, an equality of benefits theory was unable to preserve the constitutionality of the community education program at issue in *Ball*, *supra*. In an effort to appeal to taxpayers who sent children to parochial schools, that program was designed to equalize the publicly funded benefits available to parochial and public school students. As in *Witters* and *Mueller*, attendance at these schools was the product of independent parental decisionmaking. If simple equality of funding (or equality plus private choice) were the whole constitutional rule, this program should have been upheld *in toto*. But the well-settled constitutional rule against transferring responsibility for religious education to the public fisc prevailed.

In *Zobrest*, this Court rejected a claim that allowing a school district to pay for a sign language interpreter for a parochial school student established religion. The Court, while indeed emphasizing the fact that the services were available equally in public and parochial schools, relied heavily on that aspect of *Witters* which emphasized the attenuated nature of the financial benefit to the school and the impossibility of using the statute as a means of shifting primary responsibility for funding religious education to the state. 509 U.S. at 8.

Distinguishing, not overruling, *Ball*, the *Zobrest* Court reasoned that *Ball* involved aid that "reliev[ed religious schools] of an otherwise necessary cost of performing their educational function," *id.* at 12. And this Court noted that *Zobrest* was an easy case because "no funds ... ever find their way into sectarian school coffers," *id.* at 10.

*Rosenberger*, too, although it did permit a state agency to transfer funds for the benefit of a religious organization's teaching, was at great pains to emphasize that it was not upholding the use of general revenues to fund religious teaching, a practice, it observed, that would run afoul of long-settled constitutional understandings. It noted, too, that the funds did not flow to the church directly to pay for religious activities. 115 S.Ct. at 2523.

The cases are thus consistent in upholding the "cardinal principle that the state may not ... become the prime supporter of the religious school system." *Ball*, *supra*, 473 U.S. at 397. Subsidization of religious education is a "result wholly at variance with the Establishment Clause." *Nyquist*, *supra*, 413 U.S. at 782, n. 38. Equal treatment of religious and secular causes is an element of the Establishment Clause, but it cannot be allowed to trump the central principle that informs the Clause: Government may provide incidental financial aid to religious instruction, but aid which by its scope and predictability shifts the burden of funding such instruction to the public fisc is unconstitutional.

### C. History Lends No Support to Equality of Funding as the Core Value of the Establishment Clause

Both advocates and opponents of the principle of equal treatment marshall arguments from the founding era in support of their position. Those arguments are summarized in the clashing opinions of Justices Thomas and Souter in *Rosenberger*, *supra*, 115 S.Ct. at 2529; 2535-39. *Amici* believe that Justice Souter has far the better of that argument.



The subsequent course of history dispels the notion that the Court's traditional understanding of the founding era is distorted by 20th century perceptions. Throughout the 19th Century the no-aid principle, often referred to as the volunteerism principle, was held out as an essential element of the American arrangement of church-state relations.[3] This is easily documented whether one looks to religious sources or legal ones.

The well-known church historian, Phillip Schaff pointed to the absence of governmental support for religious activities as a unique and salutary feature of the American church-state settlement:

> Another peculiarity in the ecclesiastical condition of North America, connected with the Protestant origin and character of the country, is the separation of church and state. ... The president and governors, the congress at Washington, and the state legislatures, have, as such, nothing to do with the church, and are by the Constitution expressly forbidden to interfere in its affairs. ... The church, indeed, everywhere enjoys the protection of the laws for its property, and the

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3. A recently published 1833 letter of James Madison explicitly affirms Madison's understanding that the separation of church and state enjoined by the First Amendment required that the "Christian religion itself, ought not, so far at least as pecuniary means are involved, to be provided for by the Government, rather than be left to the voluntary provisions of those who profess it." Letter of James Madison to Jasper Adams in D.L. Dreisbach, Religion and Politics In the Early Republic: Jaspar Adams and the Church State Debate (1996), 117-20.

> exercise of its functions; but it manages its own affairs independently, and has also to depend for its resources entirely on voluntary contributions.

Phillip Schaff, *America, A Sketch of Its Political, Social and Religious Character*: John Harvard Library Reprint, 1961 (1854) 73-75. Professor Perry Miller in his introduction to the reprint of that lecture notes that literally thousands of sermons to this effect are extant. *See id.* at xxxiii. Those sermons reflect the triumph of the Jeffersonian and Republican antipathy to state support of religion. A.M. Schlessinger, *Age of Jackson* (1945), 350-68.

Dr. Schaff repeated these views at the end of the century in a lengthy paper on American church-state relations prepared for the American Historical Society, 2 *Papers of the American Hist. Ass'n* #4 at 15, 48, 78-83 (1888). *Accord* R. Baird, *Religion In the United States of America* (1844), at p. 286-90. Or as F. Lieber put it in *Civil Liberty and Self-government* (Philadelphia, 1859) p. 99, "the American doctrine of separation prohibits government from forming or endorsing churches ... nor [tolerates] the people [to] be taxed by government to support the clergy of all churches as is the case in France." Those states that had not adopted the no-aid principle at the time of the framing of the Constitution did so in the 19th century.

The few judicial decisions in the 19th Century reflect this view. *See, e.g., Cook County v. Chicago Industrial School for Girls*, 125 Ill. 540, 118 N.E. 183, 193 (1888) (citing Cooley, *Constitutional Limitations* (5th ed. 1890) at p. 380) (referring to both state and federal constitutions). "Not only is no one religious denomination to be favored at the expense of the rest,



but all support of religious instruction must be entirely voluntary." *Id. Accord, Board of Educ. v. Minor*, 23 Ohio St. 211, 13 Am. Rep. 233 (1872) (federal and state constitutions).

Henry Black, in his *Handbook of American Constitutional Law*, § 198(c) (2nd ed. 1897), stated as black-letter law that both federal and state constitutions prohibit "the appropriation of public money ... for the support of any church, sect, or religious body ...." *Id.* at 447. And, he explained, "A church is established ... when it is supported by general or public taxation." *Id.* at 453. And, of course, it was the no-aid rule which (although tainted by anti-Catholic bigotry, with which it was too often combined), fueled the movement to prevent state governments from funding parochial schools. *See* D. Ravitch, *The Great School Wars* (1974); J.W. Pratt, *Religion, Politics and Diversity: The Church-State Theme In New York History* (1967). Congress insisted that each state (except Idaho) admitted to the union after 1875 insert a no-aid provision into its constitution. *See* II A.P. Stokes, *Church and State In The United States* (1950) at 69-70. If government did not always observe the constitutional rule—as governments are want to do—the rule itself was clear enough.

These sources lend substantial support to the reading of the founding era history of the Establishment Clause urged by Justice Souter, that the no-aid principle was an integral element of political arrangements embodied in that Clause.

## CONCLUSION

For the reasons stated the judgment should be affirmed because Fed.R.Civ.P. 60(b) is not an appropriate vehicle for reconsidering *Aguilar*. Should this Court disagree, the case

should be remanded to the District Court for appropriate fact-finding and entry of a modified injunction.

Respectfully submitted,

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# APPENDIX A

## APPENDIX A

### *Agostini Amici*

The *American Jewish Congress* is an organization of American Jews founded in 1918 to protect the civil, political, economic and religious interests of American Jews. It has a long-standing commitment to the separation of church and state, having either represented one of the parties or filed briefs *amicus curiae* in most of this Court's cases interpreting that principle.

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The *American Federation of Teachers, AFL-CIO* (AFT) is a national labor union affiliated with the AFL-CIO and is the parent organization of various state and local affiliates, including the local that represents public school teachers and education personnel in the New York City schools. The AFT represents over 900,000 members who work in public schools, community colleges and universities, state government and health care. The vast majority of AFT members work as teachers and teaching assistants in public elementary and secondary schools, many of which are in school districts with Title I programs similar to that at issue in this case. AFT has a longstanding interest in First Amendment and related constitutional issues impacting on its membership.

***

The *American Jewish Committee* (AJC), a national organization of 50,000 members, was founded in 1906 to protect the civil and religious rights of Jews. AJC has strongly supported the constitutional principle of separation of religion and government embodied in the Religion Clauses of the First Amendment, as the cornerstone of American religious liberty. AJC joins as *amicus* to stress that the Court need not, and should not, revisit this long-standing church-state jurisprudence that has served the cause of religious liberty to well. Nowhere is the need to maintain church-state separation greater than in

the context of public schools, where the dangers from utilization of state institutions to advance religious doctrine are the greatest. But, within the contest of Title I--a program expressly designed to aid disadvantaged children--the provision of remedial education services on parochial school premises may be permissible in accordance with the separation principle so long as there are appropriate safeguards to ensure strict compliance with the Constitution.

***

The *Anti-Defamation League* (ADL) was organized in 1913 to advance good will and mutual understanding among Americans of all creeds and races, and to combat racial and religious prejudice in the United States. ADL has always adhered to the principle that the above goals and the general stability of democracy are best served through the separation of church and state and the protection of the right to free exercise of religion. In support of this principle, ADL has previously filed *amicus* briefs in numerous cases including *Kiryas Joel v. Grumet*, 512 U.S. 687 (1994); *Witters v. Washington Dept. of Services for the Blind*, 474 U.S. 481 (1986); *Aguilar v Felton*, 473 U.S. 402 (1985); *Grand Rapids v. Ball*, 473 U.S. 363 (1985); and *Lemon v. Kurtzman*, 403 U.S. 602 (1971). ADL is able to bring to the issues raised in this case the perspective of a national organization dedicated to safeguarding all persons' religious freedoms.

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The *Baptist Joint Committee on Public Affairs* is composed of representatives from various national cooperating Baptist conventions and conferences in the United States. It deals exclusively with issues pertaining to religious liberty and church-state separation and believes that vigorous enforcement of both the Establishment and Free Exercise Clauses is essential to religious liberty of all Americans. The Baptist Joint Committee's supporting bodies include: Alliance of Baptists; American



Baptist Churches in the U.S.A.; Baptist General Conference; Cooperative Baptist Fellowship; National Baptist Convention of America; National Baptist Convention, U.S.A., Inc; National Missionary Baptist Convention; North American Baptist Conference; Progressive National Baptist Convention, Inc.; Religious Liberty Council; Seventh Day Baptist General Conference; and Southern Baptists through various state conventions and churches. Because of the congregational autonomy of individual Baptist churches, the Baptist Joint Committee does not purport to speak for all Baptists.

***

The *Central Conference of American Rabbis* (CCAR) is the organized rabbinate of Reform Judaism, consisting of over 1,800 Reform Rabbis throughout North America. CCAR has long affirmed that religious freedom stands as a cornerstone of American democracy, and that the separation of church and state is the bulwark of our nation's commitment to religious freedom. It joins as *amicus* in this case in support of that principle.

***

The *National Education Association* (NEA) is a nationwide employee organization, which (through a network of state and local affiliates) represents some 2.5 million employees in public school districts, colleges, and universities throughout the United States. NEA long has been committed to the constitutional principle of separation between church and state, and has participated as an *amicus* in many of this Court's cases involving the application of this principle in public education.

***

The *National Jewish Community Relations Advisory Council* (NJCRAC) is an umbrella organization comprising the following national member organizations: American Jewish Committee, American Jewish Congress, Anti-Defamation League, B'nai B'rith, Hadassah, Jewish War Veterans of the

United States of America, Jewish Labor Committee, National Council of Jewish Women, Union of American Hebrew Congregations, Union of Orthodox Jewish Congregations of America, United Synagogue of Conservative Judaism, Women's League for Conservative Judaism, Women's American ORT; as well as 117 community member agencies representing all major Jewish communities in the United States (listed in Appendix B). The Union of Orthodox Jewish Congregations of America does not join in this brief, having joined in an *amicus* brief in support of Petitioners.

As the national planning and coordinating body for the field of Jewish community relations and the public-affairs instrumentality for Jewish communities around the country, dedicated to preserving the principles embodied in the Bill of Rights, NJCRAC believes that the separation of church and state is an essential bulwark in maintaining the individual, group, and political equality of all Americans.

***

*People For the American Way* (People For) is a nonpartisan, education-oriented citizen's organization established to promote and protect civil and constitutional rights, including First Amendment freedoms. Founded in 1980 by a group of religious, civic and educational leaders devoted to our nation's heritage of tolerance, pluralism and liberty, People For now has over 310,000 members nationwide. People For has frequently represented parties and filed *amicus curiae* briefs in litigation seeking to defend First Amendment rights and promote effective public education, including cases concerning both the free exercise of religion and separation of church and state. People For has joined in filing this *amicus* brief in order to help vindicate the important First Amendment principles at stake in this case, particularly the principle that government should not directly support or become unduly entangled with religion.

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The *Union of American Hebrew Congregations* (UAHC) represents 1.5 million Reform Jews in 850 congregations nationwide. For over a century, the UAHC has fought for religious liberty and tolerance, believing these to be among the greatest gifts America has bestowed upon the world. The UAHC has participated as *amicus* in a wide array of religious liberty cases, often before the United States Supreme Court. Recent Supreme Court *amicus* participation includes *Board of Education of the Kiryas Joel Village School District v. Louis Grumet* (1993) and *City of Boerne v. Texas v. P.F. Flores, Archbishop* (1997).

# APPENDIX B

## APPENDIX B

## COMMUNITY MEMBER ORGANIZATIONS OF THE NATIONAL JEWISH COMMUNITY RELATIONS ADVISORY COUNCIL

Birmingham JCC*
Greater Phoenix Jewish Federation
Tucson Jewish Federation of Southern Arizona
Greater Long Beach and West Orange County Jewish Community Federation
Los Angeles CRC** of Jewish Federation-Council
Oakland Greater East Bay JCRC***
Orange County Jewish Federation
Sacramento JCRC
San Diego CRC of United Jewish Federation
San Francisco JCRC
Greater San Jose JCRC
Greater Bridgeport Jewish Federation
Greater Danbury CRC of Jewish Federation
Eastern Connecticut Jewish Federation
Greater Hartford CRC of Jewish Federation
New Haven Jewish Federation
Greater Norwalk Jewish Federation
Stamford United Jewish Federation
Waterbury Jewish Federation
JCRC of Connecticut
Wilmington Jewish Federation of Delaware
Greater Washington JCC
South Broward Jewish Federation
Greater Fort Lauderdale Jewish Federation
Jacksonville Jewish Federation
Greater Miami Jewish Federation

Greater Orlando Jewish Federation
Palm Beach County Jewish Federation
Pinellas County Jewish Federation
Sarasota-Manatee Jewish Federation
South County Jewish Federation
Atlanta Jewish Federation
Savannah Jewish Council
Metropolitan Chicago JCRC of the Jewish United Fund
Peoria Jewish Federation
Springfield Jewish Federation
Indianapolis JCRC
South Bend Jewish Federation of St. Joseph Valley JCRC of Indiana
Greater Des Moines Jewish Federation
Lexington Central Kentucky Jewish Federation
Louisville Jewish Community Federation
Greater Baton Rouge Jewish Federation
Greater New Orleans Jewish Federation
Shreveport Jewish Federation
Portland Southern Maine Jewish Federation-Community Council
Baltimore JCRC
Greater Boston JCRCC
Marblehead North Shore Jewish Federation
Greater New Bedford Jewish Federation
Springfield Jewish Federation
Worcester Jewish Federation
Metropolitan Detroit JCC
Flint Jewish Federation
Minneapolis Minnesota and Dakotas JCRC-Anti-Defamation League
Greater Kansas City Jewish Community Relations Bureau
St. Louis JCRC



Omaha JCR Committee of Jewish Federation
Atlantic County Federation of Jewish Agencies
Central New Jersey Jewish Federation
Clifton-Passaic Jewish Federation
Delaware Valley Jewish Federation
Metrowest United Jewish Federation
Greater Middlesex County Jewish Federation
Northern New Jersey JCRC
Southern New Jersey JCRC Jewish Federation
Albuquerque JCC
Binghampton Jewish Federation of Broome County
Greater Buffalo Jewish Federation
Elmira CRC of Jewish Welfare Fund
Greater Kingston Jewish Federation
Northeastern New York United Jewish Federation
Greater Orange County Jewish Federation
Rochester Jewish Community
Syracuse Jewish Federation
Utica Jewish Federation
Akron Jewish Community Federation
Canton Jewish Community Federation
Cincinnati JCRC
Cleveland Jewish Community Federation
Columbus CRC of Jewish Federation
Greater Dayton CRC of Jewish Federation
Greater Toledo CRC of Jewish Federation
Youngstown JCRC of Jewish Federation
Oklahoma City JCC
Tulsa JCC
Portland Jewish Federation
Allentown CRC of Jewish Federation
Erie JCC
Greater Philadelphia JCRC

Pittsburgh CRC of United Jewish Federation
Scranton-Lackawanna Jewish Federation
Greater Wilkes-Barre Jewish Federation
Providence CRC of Rhode Island Jewish Federation
Charleston JCR Committee
Columbia CRC of Jewish Welfare Federation
Memphis JCRC
Nashville and Middle Tennessee Jewish Federation
Austin JCC
Greater Dallas JCRC of Jewish Community Federation
El Paso JCR Committee
Fort Worth Jewish Federation
Greater Houston Jewish Federation
San Antonio JCR of Jewish Federation
Newport News-Hampton United Jewish Community of the Virginia Peninsula
Richmond Jewish Community Federation
Tidewater United Jewish Federation
Greater Seattle Jewish Federation
Madison JCC
Milwaukee Jewish Council

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* JCC - Jewish Community Council
** JCRC - Jewish Community Relations Council
*** CRC - Community Relations Committee or Council